IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O. No.117-M of 1996
Date of decision: February 27, 2008.

Meena Kumari

...**Appellant**

v.

Parshotam Dass

...**Respondent**

CORAM:HON'BLE MR. JUSTICE SURYA KANT

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest.

Present: Shri S.K. Sud, Advocate for the appellant.

Shri Raman Mahajan, Advocate for the respondent.

ORDER

Surya Kant, J. - This Appeal has been filed by the wife against the judgment dated 3.6.1996 passed by the learned Additional District Judge, Bhatinda whereby a petition under Section 13 of the Hindu Marriage Act (for short the Act) on the ground of cruelty and desertion, preferred by the respondent – husband, has been accepted and their marriage has been dissolved by a decree of divorce.

[2]. The marriage between the parties was solemnized on 19.2.1973 at Patiala. At the time when the subject divorce petition was filed by the husband on 21.10.1991, they had three male children born out of the wedlock and they were about 18, 16 and 12 years of age respectively. In his

petition, the respondent alleged that the behaviour of the appellant towards the respondent and his old mother was "indifferent" from the very beginning; that she is "suffering from some sort of mental disorder" with the result that she refused to cook meals for him and the minor children; that she "levelled false allegations qua the character" of the respondent; that she gave severe beatings to the mother of the respondent on 22.9.1990 and that as a result thereof, he filed a divorce petition in which the appellant allegedly made a statement on 13.3.1991 that she will not misbehave in future with the respondent or his mother and undertook not to file any complaints against him either to the police or to the higher authorities of the Board; that the matter was compromised and the petition for dissolution of the marriage was withdrawn.

[3]. The respondent has further averred that soon after the above stated compromise, the appellant allegedly refused to honour her words and started making "false and frivolous complaint" to the Deputy Commissioner, Bhatinda alleging that she had fear for her life at the hands of the respondent. The respondent alleged that he along with the children has been forced to "live in the small rented house" and that he has a vast circle of friends but the appellant allegedly refused to look after the visitors and forced the respondent to "cook meals, clean utensils and wash the clothes of the children also". This fact was allegedly noticed by the relatives and friends of the respondent who used to visit the house thereby causing great mental cruelty to him as the respondent's reputation stood blotted. It was further alleged that the appellant in connivance with her father "broke open the locks of the house which is under the possession of his mother and valuable articles were removed....". It was also alleged that

the appellant threatened the respondent "to get him physically liquidated". On the strength of these allegations, the respondent sought dissolution of their marriage by a decree of divorce.

[4]. The appellant contested the above stated petition vide her reply dated 16.12.1992 and took a preliminary objection that the respondent in fact was taking advantage of his own wrongs as it was he who subjected her to cruelty even though she wanted to lead a honorable life with him. The appellant specifically averred that the respondent has deserted her "with ulterior motive and has declined to give food and shelter". On merits, the appellant took the plea that soon after their marriage, the respondent started harassing her for bringing insufficient dowry and did not even attend the marriage of her brother held in the year 1974. She alleged that till the time her father-in-law was alive, the respondent used to behave reasonably well, however, after his death in the year 1978, he started beating her mercilessly and on many occasions refused to provide food or woolen clothes during winters. It was alleged that for the last over five years, the respondent has been continuously beating her so badly and ruthlessly that it has also affected her eye sight. She denied the allegations that she refused to cook food for the respondent, their children or her mother-in-law or that she ever made any false complaints against the respondent to the authorities. In para 6 of the written statement, the appellant specifically alleged that in fact the respondent "desired to re-marry and wanted to get rid of her". She further alleged that the previous divorce petition was withdrawn by the respondent after stating that he had compromised the matter and shall not beat her and will behave properly in future. In fact the divorce petition was withdrawn by him to avoid maintenance *pendente-lite* and litigation expenses. The

appellant specifically averred that she never refused to accompany the respondent, rather it is he "who refused to take the respondent to his home". She further averred that since the respondent wanted to turn her out of the matrimonial home, he "himself left the house along with children and started residing in Ganesha Basti in House No.W-4/813 Bhatinda" and thereafter got filed eviction application against her from his mother alleging therein that she was a tenant in the house. The appellant admitted that she had to approach the Deputy Commissioner Bhatinda as her life and liberty was at stake for the reason that the respondent sent "hired unsocial elements at midnight at her residence" on 2nd May, 1991 and 4th May, 1991 who was later on caught by the neighbours and was given severe beatings. Fortunately, her father was with her at that time.

[5]. In his rejoinder, the respondent – husband not only reiterated the allegations, he further averred that since he refused to pay Rs.25,000/- to the brother of the appellant who wanted to expand his business of welding material, she became totally arrogant and threatened him that she will take revenge later on. Admitting the poor eye sight of the appellant, the respondent averred that she is suffering from an "inherited disease.... which cannot be cured....". He denied the allegations that he wanted to re-marry.

[6]. On the basis of the pleadings, following issues were framed by the learned trial court:-

> "*1. Whether respondent has deserted the petitioner without any sufficient and reasonable cause? OPA*
>
> *2. Whether the respondent is guilty of cruelty as alleged in the petition? OPA*
>
> *3. Whether the respondent is entitled to special costs as*

alleged in the written statement? OPR

4. Whether the petitioner has no cause of action and locus standi to file the petition?

5. Relief."

[7]. In order to discharge his onus qua issues No.1 and 2, the respondent examined formal witnesses Prem Kumar (AW1), who is a record-keeper in the Sessions Division at Bhatinda and produced the file of previous divorce petition HMA No.35 dated 28.9.1990 decided on 13.3.1991 as well as Surjit Singh (AW2), who being Reader to the Court of Additional District Judge Bhatinda on 13.3.1991, had recorded the statements of the parties. The respondent also examined Om Parkash (AW3), ASI Kashmir Singh (AW4), Uzagar Singh (AW5), Amrik Singh (AW6), Constable Dalbir Singh (AW7), Head Constable Gurcharan Kaur (AW8), respondent, himself as (AW9) and Madan Lal Sharma (AW10) and also relied upon documents Ex.A1 to A8.

[8]. The appellant, on the other hand, examined her brother Amar Nath Gupta (RW1) and she herself entered the witness box as (RW2). She also relied upon the documents Ex.R1 to R6.

[9]. Upon appreciation of the above stated evidence and while deciding the issues No.1 and 2 together, the learned Additional District Judge held that the appellant refused to prepare tea for the visitors, she often abused her husband and made false complaints against him to the police and his colleagues/superiors. The appellant's statement dated 13.3.1991 (Ex.A1) in the previous divorce petition, which was compromised, has also been relied upon to arrive at the aforesaid conclusion. The learned trial court also placed reliance upon Ex.A4, a report alleged to have been made by HC

Gurcharan Kaur and concluded that, "there is no rebuttal to documentary evidence of the petitioner regarding the alleged cruelty by the respondent" and that the appellant "only wanted to extract money from the petitioner by filing various petitions and applications before the police". The learned trial court held that it was a case of causing 'mental cruelty' to the husband who "made every effort to join the respondent in his company". The learned trial court further held that the appellant-wife has deserted the respondent "without any sufficient and reasonable cause...". Both the issues were accordingly answered against the appellant, resulting into passing of the impugned judgment and decree.

[10]. I have heard Learned Counsel for the parties, perused the pleadings, the impugned judgment as well as the evidence on record.

[11]. Before adverting to issue No.2, i.e., "whether or not the respondent is guilty of cruelty as alleged in the petition", I firstly propose to deal with issue No.1, as to whether she had "deserted the respondent without any sufficient and reasonable cause?".

[12]. If one reads the petition under Section 13 of the Act dated 21.10.1991 , it is evident in unequivocal terms that no allegations, what-so-ever, that the appellant ever deserted her husband without any sufficient cause, have been made. The entire petition is founded upon the allegations of cruelty and it is in that process that the respondent in para 8 of the petition has averred that he along with his sons, who are studying in Convent School and DAV College, Bhatinda respectively, "have been forced to live in the small rented house". No averment that the appellant voluntarily left her matrimonial home and, thus, deserted the respondent, has been made. In the absence of such allegations, how issue No.1 was

framed, is beyond comprehension. Be that as it may, it is the admitted fact that house no.3880, Neeta Street, behind Gurdwara Singh Sabha, Bhatinda is owned by the respondent or his mother. The parties were admittedly residing in the said house only, as the respondent himself gave the same address for both the parties in his first divorce petition No. HMA35 dated 28.9.1990. The parties were, thus, residing under the same roof not only in the year 1990 but also at the time when they compromised their matrimonial dispute on 13.3.1991. In para 6 of her written statement, the appellant – wife has specifically averred that the respondent – husband "himself left the house along with children and started residing in Ganesha Basti in House No.W-4/813 Bhatinda". This fact has been admitted by the respondent in para 8 of the divorce petition though in a different manner. Not only this, the appellant admittedly continues to stay in the same house owned by the respondent or his mother even though the respondent attempted to throw her out by getting an eviction petition filed through his mother. The appellant's specific stand that an eviction petition was filed by her mother-in-law alleging her to be a tenant in the premises, has not been controverted by the respondent in his rejoinder. If that is so, the conclusion drawn by the learned trial court that the appellant has deserted her husband without any "sufficient cause" is totally contrary to the evidence on record. It is the respondent who concededly left the matrimonial home and shifted to a rented accommodation. The finding returned by the learned trial court on issue No.1, therefore, cannot sustain and is accordingly set aside.

[13]. This takes us to the crucial issue as to who out of the two subjected the other to cruelty of such a high degree that the matrimonial tie had to be snapped by a decree of divorce.

[14]. At the cost of repetition, it may be noticed that in order to prove the allegation of cruelty at the hands of the appellant, the respondent has alleged that she (i) refused to cook meals for the family; (ii) levelled false allegations on the character of the respondent; (iii) gave beatings to the mother of the respondent; (iv) admitted these allegations in her statement on 13.3.1991 in the previous divorce petition when she said that she will not misbehave in future; (v) moved false and frivolous complaints to the Deputy Commissioner, Bhatinda; (vi) in connivance with her father, broke open the locks of the house and removed the valuables; and (vii) threatened the petitioner to get him physically liquidated.

[15]. To prove the above reproduced first allegation, the respondent in addition to his own statement, has examined Om Parkash (AW3). The said witness has deposed that whenever he "visited the house of the petitioner and he requested the respondent to prepare tea, she refused for all the times". He, however, has admitted that "he did not know as to whether the respondent used to prepare meals for her husband, mother-in-law and children" as according to the witness, he "did not sit in the house all the times". The statement of this witness inspires no confidence at all. He was a family friend of the respondent. No date, month or year of his alleged visit to the house of the respondent has been disclosed by him. A sweeping statement by an interested witness, which is totally vague in nature, cannot be termed as a reliable evidence. So far as the respondent's own version is concerned, no credence can be given to the same as it would be revealed that he was hellbent on throwing the appellant out of her matrimonial home on one pretext or the other. The second instance of cruelty is sought to be substantiated through Uzagar Singh (AW5) who has deposed that the

appellant "used to abuse" the respondent. In his cross examination, he had to concede that he did not remember as to when did he visit the residence of the parties. He admits that the appellant visited his residence and complained that her husband is not "paying any maintenance nor keeping her with him". If those were the state of affairs that the appellant wife had to rush to one family friend or the other for her sustenance, how could the appellant be held guilty of subjecting the respondent to cruelty? The other witness Amrik Singh (AW6) - a Junior Engineer is also a colleague of the respondent. While he claims that the appellant used to go to the office of the XEN/SDO for making complaints against her husband and used to utter obnoxious remarks against him, he admits having no knowledge as to whether or not the respondent provided food and clothing to his wife and/or paid maintenance. Interestingly, the complaint (Ex.A8) produced by Constable Dalbir Singh is a complaint made by the mother of the respondent against the appellant before the SSP, Bhatinda. How on the earth the said document could be relied upon against the appellant to establish the alleged cruelty by her towards the respondent, is beyond any legal fiction. The learned trial court, however, has taken these self-serving complaints made by the respondent or his mother also as an evidence against the appellant.

[16]. This takes us to the third incident, namely, a complaint by the appellant to the Deputy Commissioner, Bhatinda. The appellant has candidly admitted in her written statement as well as in her deposition that she made a complaint to the Deputy Commissioner, Bhatinda. She has, however, given a specific reason, namely, that in the midnight of 2.5.1991 and 4.5.1991 respectively, the respondent sent an unsocial element hired by him to her residence who was caught and thrashed by the neighbours.

Fortunately, the father of the appellant was staying with her during those days. The respondent has not been able to dispute this occurrence specifically. Had she been all alone, any untoward incident could have taken place. In these circumstances when the respondent was adopting all sorts of dubious means to brow-beat and terrorize the appellant so as to force her to vacate the house of his mother, what sin the appellant had committed by approaching the district administration for the protection of her life and liberty? This was a lawful action taken by her, which, with no stretch of imagination, can be termed as an act of cruelty on her part.

[17]. Adverting to the allegation that the appellant gave beatings to the mother of the respondent, firstly, no evidence of causing such beatings, like medico-legal report, etc. has been brought on record. No independent person, who might have witnessed such an incident, has come forward to depose. Even the mother of the respondent has not come and deposed. Not only this, the eldest child of the parties was 18 years old when the divorce petition was filed. Even he could have been produced to depose the truth. In the absence of an iota of evidence, no reliance on the bald statement of the respondent, can be placed. There is no other evidence to support the allegation that the respondent was ever subjected to cruelty by the appellant. The conclusion drawn by the learned trial court on issue No.2 is also, thus, contrary to the evidence on record and is, therefore, reversed.

[18]. There are, however, more than one reason to hold that the respondent founded his petition upon totally false allegations and it is rather he who has subjected the appellant with extreme cruelty. The evidence on record does suggest that she was physically tortured and has been deprived of basic necessities for survival and to live with dignity. She has lost her

eye sight due to cruel and callous attitude of the respondent who could not muster the strength to deny the said truth though has sought to explain that the appellant was not taken for treatment, as she was suffering from an "incurable hereditary disease". It cannot be overlooked that it was a case where the marriage was solemnized long back in the year 1973. No fault was found with the appellant's behaviour when three children were sired and they grew up enough to look after themselves independently. It is thereafter only that the respondent started finding consistent faults with the appellant. From the *zimni* orders passed by the learned trial court, it is apparent that the respondent has been adopting one or the other unsavory means to delay or deny the payment of maintenance to the appellant. She was forced to visit the offices of higher authorities of the respondent as well as his friends in order to persuade him to pay maintenance to her. The fact that the respondent also got filed an 'eviction petition' through his mother to render the appellant homeless, is yet another strong circumstance to exhibit his vengeance against the appellant.

[19]. The appellant's allegation that the respondent himself left the matrimonial home as he did not want to live with her, is further proved by the fact that on 28.8.1993, the divorce petition was put before the Lok Adalat where he compromised the matter and agreed to take the appellant with him. He, however, turned around and later on made a statement that the "situation has changed and he is not ready to keep her". It is also on record that even for the recovery of the arrears of maintenance, the appellant was forced to file a civil suit.

[20]. For the reasons afore-stated, the impugned judgment dated 3.6.1996 passed by the learned Additional District Judge, being contrary to

the facts and evidence on record, is liable to be set aside.

[21]. The matter, however, is not as simple as to be rested here. The parties were married in the year 1973. They have been admittedly living separately since the year 1991. Their children have grown up and are married. In order to find out an amicable solution, their eldest son was also asked to be present in Court. He did come. The parties were heard in person also. The appellant is in a pitiable condition. She has almost turned blind and is now confined to a one room accommodation, which is stated to be in a dilapidated condition. The respondent has refused to carry out the necessary repairs even when the appellant's right to residence is a part and parcel of her right to maintenance. (Ref: **B.P. Achala Anand v. S. Appi Reddy**, (2005)3 SCC 313) She cannot spare money out of a meagre amount of Rs.600/- which she is getting as maintenance *pendente-lite*. Though the appellant's suit for recovery was decreed by both the courts below, however, the Regular Second Appeal preferred by the respondent was admitted and operation of those judgments was stayed. She, thus, could not recover even a penny from the respondent. In these peculiar circumstances, the intervention of the parties' son was sought but he too expressed his helplessness in resolving the dispute. As the respondent took a categoric stand not to take the appellant to her matrimonial home in any circumstance, the appellant was persuaded and she reluctantly agreed to part ways on payment of a reasonable and respectable lump-sum amount, a part of which she urgently requires for her eyes' surgery and repair of the one room house. This was also not acceptable to the respondent.

[22]. As the parties are living separately from the last 15 years and the bad blood against each other is still boiling hot, it is undoubtedly a case

of irretrievably broken marriage. The parties are at a point of no-return. While the respondent cannot encash his own misdeeds, the appellant also need not be foisted upon him at this stage as he is not ready to accept her for the re-beginning of their married life. The solution to such a dilemma lies in the principles enunciated by the Hon'ble Supreme Court in the case of **Naveen Kohli v. Neelu Kohni**, 2006(4) SCC 558. Applying the *dictum* laid therein and keeping in view the peculiar facts and circumstances of this case, as noticed above, I uphold the decree of divorce not on the ground of 'cruelty' or 'desertion' as granted by the learned trial court, rather after holding that it is a case of irrepairable broken marriage. The marriage is totally dead and has ceased to exist. The parties have no sentiments for each other. The decree of divorce, granted by the trial court, therefore, is kept intact subject to, however, the condition that the respondent – husband shall pay a total sum of Rs.5 lacs to the appellant within a period of six months, i.e., a sum of Rs.1 lacs shall be paid by him within one month from the date of receipt of a certified copy of this order and the remaining four lacs in two equal installments of Rs.2 lacs each, the first one to be paid two months after the payment of Rs.1 lac and the balance amount of Rs.2 lacs shall be paid by him in another three months thereafter.

[23]. The lump-sum amount has been awarded after taking notice of the fact that the respondent has not only got lacs of rupees towards retiral benefits, he, along with his sons, is also running flourishing business including an industrial unit. He is, thus, financially sound and capable to part with the aforesaid amount.

[24]. However, if the respondent fails to pay the afore-stated amount to the appellant within the prescribed time schedule, in that event the appeal

shall stand allowed and as a result thereof the judgment and decree dated 3.6.1993 passed by the learned Additional District Judge, Bhatinda would be taken to have been set aside with costs of Rs.15,000/-.

February 27, 2008. [**Surya Kant**]
kadyan **Judge**